



THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

May 10, 2006

The Honorable J. Dennis Hastert
Speaker of the House
Washington, DC 20515

Dear Mr. Speaker:

Enclosed for the consideration of Congress is draft legislation--

To amend the automobile fuel economy provisions of title 49, United States Code, to reform the setting and calculation of fuel economy standards for passenger automobiles, and for other purposes.

The enclosed legislative proposal is designed to replace an out-of-date, 1970s approach to increasing the overall fuel economy of the Nation's passenger automobile fleet with a modern, proven methodology that has succeeded in significantly improving the fuel economy of newly manufactured non-passenger automobiles. President Bush has sought this authority as an important step to reducing America's oil demand, consistent with his call to replace more than 5 million barrels per day of oil imports by the year 2025. The President and I are committed to improving fuel economy across the board through an open regulatory process built upon sound science and economics.

In requesting reform authority, the Administration seeks to apply the valuable experience gained in setting higher corporate average fuel economy (CAFE) standards for non-passenger automobiles. On March 29, DOT completed its second light truck CAFE rulemaking in the past four years by replacing the one-size-fits-all system with an innovative system based on vehicle attributes. A system that bases fuel economy standards on vehicle attributes is superior to the current "one-size-fits-all" approach for several reasons:

- First, a system based on vehicle attributes preserves vehicle choice: Instead of forcing manufacturers to produce smaller vehicles for purposes of regulatory compliance, this approach takes the manufacturers' own product mix projections and then applies separate fuel economy targets to each vehicle based on relevant attributes. Under a system based on vehicle attributes, automakers will still be able to build the cars consumers want, but those cars will have to be more fuel efficient across the board.

- Second, a system based on vehicle attributes eliminates the perverse incentives for manufacturers to produce smaller and more dangerous vehicles instead of introducing fuel-saving technologies.
- Third, a system based on vehicle attributes ensures that all manufacturers are introducing fuel-saving technologies, not only the manufacturers of larger vehicles.

The new light truck standards will lead to a safer, more efficient CAFE program and will save a record 10.7 billion gallons of fuel. This rule also included large sport utility vehicles (SUVs), such as the Hummer H2, under CAFE for the first time.

Today, following our successful overhaul of the light truck CAFE program and consistent with the 2002 recommendations of the National Academy of Sciences, we have the capacity to establish a far more precise, efficient, and safe CAFE program for passenger cars, but we need the legal authority to do it, as set forth in the attached proposal.

The passenger car fuel economy standard was set at 27.5 miles per gallon in the original 1975 CAFE statute. The original statute did not authorize DOT to change the way the standard applied to classes of cars with differing attributes. Neither Congress nor DOT has ever increased the passenger car standard beyond the level set in the original statute. So it is important that if we embark on this course, we do it right to avoid compromising safety and to avoid causing economic damage and job loss.

If we are given the authority to reform the CAFE system for passenger cars, we can improve fuel efficiency by requiring manufacturers to apply fuel-saving technologies rather than giving them an incentive to build smaller cars. Based on the automakers' confidential product plans, our experts at the National Highway Traffic Safety Administration (NHTSA) can objectively measure how much fuel saving technology we can require before the costs outweigh the benefits. This method of formulating a fuel economy standard is objective and subject to review during the rulemaking process. It is also far more likely to produce an optimal result than if Congress were to prescribe a standard in a statute.

I understand that, anytime CAFE is debated, it can turn divisive. I voted for the original CAFE statute as a freshman Member of Congress, and I recall well the debates of the 1970s on how best to conserve fuel and what the impacts would be on the economy. I recognize that CAFE reform will not be without cost. And I am aware that certain automakers are having a rough time financially, and that thousands of hard-working Americans have lost their jobs through no fault of their own because of these financial

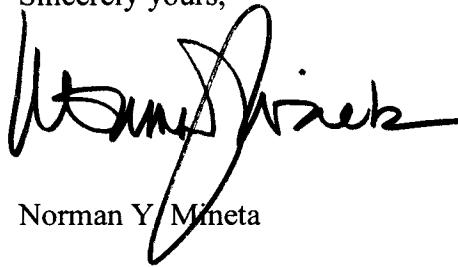
Page 3

The Honorable J. Dennis Hastert

difficulties. We have the expertise and experience to boost fuel economy responsibly without needlessly sacrificing safety or American jobs.

The Office of Management and Budget advises that it has no objection, from the standpoint of the Administration's program, to the submission of this legislation, and that its enactment would be consistent with the President's program.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Norman Y. Mineta". The signature is fluid and cursive, with a large loop at the end.

Norman Y. Mineta

Enclosures

A BILL

To amend the automobile fuel economy provisions of title 49, United States Code, to reform the setting and calculation of fuel economy standards for passenger automobiles, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CAFE STANDARDS FOR PASSENGER AUTOMOBILES.

(a) AVERAGE FUEL ECONOMY STANDARDS FOR AUTOMOBILES.—

Section 32902 of title 49, United States Code, is amended—

(1) by revising subsection (b) to read as follows:

"(b) Passenger automobiles.--At least 18 months before the beginning of each model year, the Secretary of Transportation shall prescribe by regulation average fuel economy standards for passenger automobiles manufactured by a manufacturer in that model year. Each standard shall be the maximum feasible average fuel economy level that the Secretary decides the manufacturers can achieve in that model year. The Secretary may prescribe separate standards for different classes or categories of passenger automobiles.";

(2) by revising subsection (c) to read as follows:

"(c) Adoption and legalization of standard; flexibility of authority.--(1)

Notwithstanding any other law, the final rule on non-passenger automobile fuel-economy performance for model years 2008-2011 issued by the National Highway Traffic Safety Administration on March 28, 2006 and published on April 6, 2006 (71 Fed. Reg. 17566) (as technically amended in a notice issued on April 7 and published April 14, 2006 (71 Fed. Reg. 19449)), is adopted as law of the United States and confirmed as fully legalized, as if it had, by prior Act of Congress, been specifically adopted on the date that rule (including the subsequent technical amendment) was originally issued. The adopted and legalized final rule is subject to revision by the Secretary of Transportation in accordance with the Administrative Procedure Act and other applicable statutes.

"(2) The authority of the Secretary of Transportation to prescribe by regulation average fuel economy standards for automobiles under this section includes the authority

to prescribe standards based on vehicle attributes, and to express the standards in the form of a mathematical function."; and

(3) by striking subsection (g)(2) and inserting the following:

"(2) When the Secretary of Transportation prescribes an amendment under this section that makes an average fuel economy standard more stringent, the Secretary shall prescribe the amendment at least 18 months before the beginning of the model year to which the amendment applies.

"(3) When the Secretary of Transportation prescribes a standard, or prescribes an amendment under this section that makes an average fuel economy standard more stringent, the Secretary shall--

"(A) make a written statement as a part of the rulemaking process that describes how the more stringent standard can be achieved by manufacturers without their taking steps that would compromise the crashworthiness of current automobiles;

"(B) not prescribe a change in the standard that imposes total costs that exceed total benefits, nor marginal costs that exceed marginal benefits, as determined at the time any change in the standard is promulgated; and

"(C) not prescribe a change in the standard that is expressed as a uniform percentage increase from the fuel-economy performance of automobile classes or categories already achieved in a model year by a manufacturer."

(b) CONFORMING AMENDMENTS.--(1) Section 32902 of title 49, United States Code, is further amended--

(A) in subsection (d)(1), by striking "or (c)";

(B) in subsection (e)(2), by striking "(c),";

(C) in subsection (g)(1), by striking "subsection (a) or (d)" in both places it appears and inserting "subsection (a), (b), or (d)";

(D) in subsection (h), by striking "(c)" and inserting "(b)"; and

(E) in subsection (j), by striking "(c)" and inserting "(b)".

(2) Section 32917(b)(1)(B) is amended by striking "or (c)".

SEC. 2. USE OF EARNED CREDITS.

Section 32903 of title 49, United States Code, is amended—

(1) In subsections (a)(1) and (2), by striking “3 consecutive model years” each time it appears and inserting “5 consecutive model years;”

(2) In subsection (b)(2), by striking “3 model years” and inserting “5 model years”;

(3) by redesignating subsection (f) as subsection (g); and

(4) by inserting a new subsection (f) to read as follows:

"(f) Credit transfers.--The Secretary of Transportation may permit by regulation, on such terms and conditions as the Secretary may specify, a manufacturer of automobiles that earns credits attributable to one of the following production segments in a model year to apply those credits in that model year to the other production segment:

"(1) Passenger-automobile production.

"(2) Non-passenger-automobile production.

SEC. 3. JUDICIAL REVIEW OF REGULATIONS.

(a) VENUE; TRANSFER OF PENDING PROCEEDINGS.--(1) Section 32909(a) of title 49, United States Code, is amended--

(A) in paragraph (1),

(i) by striking all after "District of Columbia Circuit" and inserting a period; and

(ii) by inserting the following at the end:

"That court has exclusive jurisdiction to review the regulation."; and

(B) in paragraph (2),

(i) by striking all after "petition for review" and inserting "in the United States Court of Appeals for the District of Columbia Circuit."; and

(ii) by inserting the following at the end:

"That court has exclusive jurisdiction to review the regulation.".

(2) Section 32909 of title 49, United States Code, as amended by this section, shall apply to all proceedings filed under that section and pending on the date of enactment. Any such proceeding commenced in a court of appeals other than the Court of Appeals for the District of Columbia Circuit prior to the date of enactment of this Act shall, in the interest of justice, be transferred to the Court of Appeals for the District of

Columbia Circuit pursuant to the provisions of section 1631 of Title 28, United States Code.

(b) CONFORMING AMENDMENT.--Section 32909(b) is amended by striking all after "regulation is prescribed" in the first sentence and inserting a period.

SEC. 4. EFFECTIVE DATE.

(a) IN GENERAL.--This Act, and the amendments made by this Act, are effective on the date of enactment of the Act.

(b) TRANSITION FOR PASSENGER-AUTOMOBILE STANDARD.--
Notwithstanding subsection (a), until the effective date of a standard for passenger automobiles that is issued under the authority of 49 U.S.C. 32902(b), as revised by this Act, the standard or standards in place for passenger automobiles under the authority of 49 U.S.C. 32902, as in effect on the day before the date of enactment of this Act, shall remain in effect.

Sectional Analysis

The enclosed legislative proposal is designed to replace an out-of-date, 1970s approach to increasing the overall fuel economy of the Nation's passenger automobile fleet with the flexible authority underlying a recently adopted methodology that has succeeded in significantly improving the fuel economy of newly manufactured non-passenger automobiles in a way that increases fuel savings, requires more manufacturers to add fuel saving technologies, and protects safety and jobs. Such authority would permit application of this or another, superior methodology to future passenger automobile fuel economy performance standards.

Section 1: Section 32902 of title 49, United States Code, contains regulatory authority to establish average fuel economy performance levels for the annual "passenger automobile" and "non-passenger automobile" production of motor vehicles sold for use in the United States. The statutory authority for passenger automobiles enacted in 1975 (49 U.S.C. 32902(b) and (c)) includes an administratively amendable cap on the maximum permitted fuel economy standard, an unconstitutional "legislative veto" provision, and a "single fleet-wide standard" methodology reflecting vehicle manufacturing patterns of more than 30 years ago. In contrast, the non-passenger automobile authority (49 U.S.C. 32902(a)) simply specifies the establishment of "maximum feasible" fuel economy standards for each model year's production, and provides substantial flexibility, allowing, for example, for "vehicle class" distinctions, a methodology that discourages simply building smaller, less crashworthy categories of vehicles to conform to a fleet-wide mandate, and the ability to fashion better future methodologies.

Section 1(a)(1) of the proposed legislation would permit the Secretary to replace the out-of-date approach for passenger automobiles in 32902(b) and (c) with the modern, flexible methodology already adopted under 32902(a) for non-passenger automobiles. Adoption of the well understood non-passenger provision means that the agency's lengthy experience with interpretation and implementation of section 32902(a) can be employed in establishing new standards in the passenger automobile segment.

Section 1(a)(2) of the proposed legislation deletes the legislative-veto and other obsolete provisions of the original CAFÉ methodology, and replaces them with two new provisions critical to rapid progress on setting new passenger-automobile standards. The first "adopts and legalizes" as an action of Congress the recently completed non-passenger automobile standard that constitutes the model for new passenger-automobile standards. This would effectively ratify the legitimacy of the methodology adopted by the National Highway Traffic Safety Administration (NHTSA) and thereby speed adoption of passenger-automobile fuel-economy performance increases.

The second new provision makes explicit that the Secretary's overall CAFÉ rulemaking authority includes basing standards on factors such as vehicle attributes. This authority exists under current wording, but making it explicit will also assist speedy rulemaking.

Section 1(a)(3) of the proposed legislation first preserves an existing requirement in section 32902(g)(2) for adequate lead time in setting standards and, second, would make explicit in statute several criteria that the Department has recently applied in establishing fuel economy standards for non-passenger automobiles: (1) neither the marginal nor total costs of a specific fuel-economy increase may exceed the resulting marginal/total benefits; (2) the standard can be achieved by manufacturers without taking steps that would compromise the crashworthiness of current automobiles; and (3) any increase in the standard may not be expressed as a uniform percentage increase from the fuel-economy performance of automobile classes or categories already achieved in a model year by a manufacturer. The first criterion is already a well-established aspect of Federal rulemaking, but future CAFE rulemakings could proceed more rapidly with this criterion made explicit in statute. The second criterion would make explicit on the face of the statute that fuel-economy increases must be achievable without adversely affecting safety. The third criterion forestalls a non-analytic evaluation of potentially realizable fuel-economy performance improvements model-year by model-year.

Section 1(b) makes necessary conforming amendments to law to delete cross references to section 32902(c), a subsection that currently contains the unconstitutional legislative veto provision and is being deleted from the statute as one element of the out-of-date 1970's methodology.

Section 2: This section would permit a manufacturer that earns credits for one type or class of automobile, e.g., a passenger automobile, to apply those credits to another type of class of automobile, e.g., a non passenger automobile. This section would authorize the Secretary to prescribe the means for transfer of credits between passenger automobile and non-passenger automobile "production segments." Additionally, the first and second numbered paragraphs of the section would expand the time frame during which credits can be used (currently 3 years forward and 3 years back) to a 5-year timeframe, to provide manufacturers added flexibility in making production changes.

Section 3: To the extent that there has been litigation over the establishment and amendment of fuel economy standards under chapter 329 of title 49, United States Code, the arguments have centered on the agency's compliance with rulemaking requirements, an area of Federal law that is the primary domain of the U.S. Court of Appeals for the District of Columbia Circuit. Additionally, chapter 329 contains differing venue provisions for appeals of actions under the chapter--the provision at 32904(b)(7)(A) provides exclusive jurisdiction in the DC Circuit Court of Appeals while the provision at 32909(a) does not. With these factors in mind and in the interests of consistency in interpretation of the chapter, section 3 of the proposal would specify that all future judicial challenges to action under chapter 329 be brought exclusively in the District of Columbia Circuit. Consistent with this change, pending lawsuits would be transferred to the DC Circuit Court of Appeals as of the date of enactment. It is anticipated that pending litigation would be dismissed because of the "adoption and legalization" of the recent non-passenger automobile standard.

Additionally, a conforming amendment in this section removes reference in 49 U.S.C. 32909(b) to the unconstitutional legislative veto deleted by section 1 of the proposal.

Section 4: This section makes the changes to law made by the Act, including amendments of chapter 329 of title 49, United States Code, effective upon enactment. However, providing the Secretary with new authority to establish passenger automobiles standards in a manner that replaces the existing statutorily established mandate of 27.5 miles per gallon might be misconstrued as indicating that no standard exists until a new one is promulgated. For this reason, subsection (b) of this section explicitly retains the current 27.5 mile-per-gallon standard until the date that a replacement standard is effective.